**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGEMENT NO.407 OF 2007**

**IN**

**SUMMARY SUIT NO.776 OF 2007**

Shrinivas Keshav Joshi .. Plaintiff.

Versus

M/s.Vandana Enterprises & Ors. .. Defendants.

Mr.K.K.Tated for plaintiff.

Ms.Purnima Bhatia for defendants.

**CORAM : S.C.DHARMADHIKARI, J.**

**DATE : 28th September, 2007.**

**P.C.:**

1. This Summons for Judgement is in Summary Suit, filed under Order 37 of the Code of Civil Procedure, 1908.

2. Heard Mr.Tated, appearing for the plaintiff and Ms.Bhatia appearing for the defendants.

3. The case of the plaintiff in this Summary Suit is that he is a Proprietor of Dnyansagar Lithopress, whereas

the defendant No.1 is a partnership firm and defendant Nos.2 and 3 are partners of defendant No.1.

4. Defendants are carrying on business of acquiring for distribution and sale rights in Motion Pictures for India and abroad.

5. A movie was produced by the producer, whose name is stated in paragraph 2 of the plaint. He placed an order for 8000 posters and 60 photosets of the film. The instructions were to deliver these posters and photosets to the defendants, who are the Bombay distributors against two post dated cheques of Rs.1,50,000/- each.

6. The defendants vide their letter dated 18th May, 2004, instructed the plaintiff to deliver these posters and photosets against two post dated cheques with the guarantee that the cheques will be honoured and it was mentioned in the letter that this arrangement is irrevocable.

7. However, the cheques were returned by the bankers with the memo "Payment stopped by the Drawer."

8. Thereafter, legal notice was issued and

subsequently, proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated, which are pending.

9. In these circumstances, a decree in the sum of Rs.4,46,146/-, being the total of two cheques along with interest and statutory rate is claimed in the present suit. Mr.Tated's submission is that the summary suit is filed on the basis of dishonoured cheques and all ingredients of Order 37 of the Code of Civil Procedure are fully satisfied.

10. Mr.Tated has invited my attention to the letter at Annexure-A and further correspondence, including Exhibit-B, which is a letter dated 18th May, 2004.

11. As against Mr.Tated's submission, Ms.Bhatia, appearing for defendants submits that the affidavit-in-reply, filed by the defendants, demonstrates that there is no substance in any of the contentions of the plaintiff. She submits that the suit is not maintainable as a summary suit. There are several triable issues, including the absence of the producer as a party to the suit. She submits that the omission to implead Mr.Kulbhushan Gupta, producer of the film is fatal. She

submits that the affidavit elaborately sets out as to how the sums have already been paid. She submits that no offence has been committed inasmuch as in the criminal case, all facts are placed on record and an order of acquittal has been passed in the proceedings under Section 138 of the N.I. Act.

12. While not denying that the business of the defendants is of distributorship of some cinematographic films and that the distributorship rights from the film were acquired from the distributor, one Dilip C.Maniar. She submits that there was a transaction between the producer and the distributor, Mr.Dilip C.Maniar. Even otherwise the order for the material was placed by the proprietor concerned, Mr.Kulbhushan Gupta with the plaintiff and on the request of the plaintiff, two post dated cheques were issued by the defendants.

13. She has invited my attention to the paragraph 8 of the affidavit-in-reply and submits that even the said request was made on behalf of the producer. She submits that there are certain grievances against the producer by several parties including one ADLABS Films and suit being S.C.Suit No.2268 of 2004 is pending in City Civil Court at Bombay. She has also invited my attention to the suit

filed being Suit No.1584 of 2004. She has invited my attention to the order of the Court Receiver being passed by the City Civil Court and also this Court. She submits that monies have been deposited and that is how the "stopped payment" instructions were issued by the bankers. She submits that none of these aspects have been denied and, therefore, the suit is not maintainable.

14. Mr.Tated, on the other hand, submits that all these aspects are denied by the plaintiffs, eventhough rejoinder is not filed by the defendants. He submits that the true effect and purport of the proceedings in City Civil Court and this Court so also order therein is that they do not in any manner affect the liability of the defendants. This is a simple case of cheques being forwarded but not honoured. He submits that prima-facie case is made out inasmuch as none of the facts with regard to the transactions are denied. Thus, the presumption in law would arise and that is how the suit is maintainable.

15. Having perused the plaint and the annexures thereto, including the correspondence, Annexures to the affidavit-in-reply and the orders passed by this Court in other suits, I am of the view that there is much substance in the contention of Mr.Tated. Prima-facie, the cheques

have been forwarded by the defendants duly signed by them and in terms of the letter at Exhibit-B. Thus, the debt and liability is prima-facie admitted. Further, the presumption in law is that a cheque is forwarded in discharge of the liability by the defendants arises in this case. Merely because there are other parties, who have a interest in the film and the rights therein, does not mean that the defendants can escape their liability in law. Prima-facie, even if the defendants desire to make good the case set out in their affidavit, they can do so on conditions. Considering the totality of the facts and circumstances, in my view, it would be just and fair if the summons for judgement is disposed of by granting conditional leave to defend in the following terms.

16. Needless to state that this order is passed after due consideration of the submission of Ms.Bhatia that the defendants have been absolved in the criminal case under Section 138 of the N.I. Act. As is well settled, it is a distinct matter and has no bearing on the maintainability of a civil suit, much less Order 37 of the C.P.C. Hence, the following order :-

> "On the defendants depositing in Court a sum of Rs.3.00 lacs within a period of 8

weeks from today, leave to defend the suit is granted. Thereupon, the suit to stand transferred to the list of commercial causes with usual directions with regard to filing of written statement, discovery and inspection."

17. Needless to state that if the amount is not deposited within the time stipulated above, all consequences in law shall follow and the plaintiff would then be entitled to apply for a decree as prayed.

18. Summons for Judgement is disposed of with no order as to costs.

**(S.C.Dharmadhikari, J.)**